

## Public Health Service, HHS

a reasonable charge to offset duplicating costs.

### **§51.42 Access to facilities and residents.**

(a) Access to facilities and residents shall be extended to all authorized agents of a P&A system.

(b) A P&A system shall have reasonable unaccompanied access to public and private facilities and programs in the State which render care or treatment for individuals with mental illness, and to all areas of the facility which are used by residents or are accessible to residents. The P&A system shall have reasonable unaccompanied access to residents at all times necessary to conduct a full investigation of an incident of abuse or neglect. This authority shall include the opportunity to interview any facility service recipient, employee, or other persons, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation. Such access shall be afforded, upon request, by the P&A system when:

(1) An incident is reported or a complaint is made to the P&A system;

(2) The P&A system determines there is probable cause to believe that an incident has or may have occurred; or

(3) The P&A system determines that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness.

(c) In addition to access as prescribed in paragraph (b) of this section, a P&A system shall have reasonable unaccompanied access to facilities including all area which are used by residents, are accessible to residents, and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours. Residents include adults or minors who have legal guardians or conservators. P&A activities shall be conducted so as to minimize interference with facility programs, respect residents' privacy interests, and honor a resident's request to terminate an interview. This access is for the purpose of:

(1) Providing information and training on, and referral to programs ad-

ressing the needs of individuals with mental illness, and information and training about individual rights and the protection and advocacy services available from the P&A system, including the name, address, and telephone number of the P&A system.

(2) Monitoring compliance with respect to the rights and safety of residents; and

(3) Inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents.

(d) Unaccompanied access to residents shall include the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. Residents include minors or adults who have legal guardians or conservators.

(e) The right of access specified in paragraph (c) of this section shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian. The system shall take no formal action on behalf of individuals with legal guardians or conservators, or initiate a formal attorney/client or advocate/client relationship without appropriate consent, except in emergency situations as described in §51.41(b)(3).

(f) A P&A system providing representation to individuals with mental illness in Federal facilities shall have all the rights and authority accorded other representatives of residents of such facilities pursuant to State and Federal laws.

### **§51.43 Denial or delay of access.**

If a P&A system's access to facilities, programs, residents or records covered by the Act or this part is delayed or denied, the P&A system shall be provided promptly with a written statement of

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